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In the

Supreme Court of the United States

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MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1975

No. 75-1286

PITT RIVER TRIBE OF INDIANS,

Petitioner,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,
THE HEARST CORPORATION, KIMBERLY-CLARK CORPORATION,
PUBLISHERS FOREST PRODUCTS,
DIAMOND INTERNATIONAL COMPANY,
FRUIT GROWERS SUPPLY COMPANY,
U. S. PLYWOOD CORPORATION, *and*
SOUTHERN PACIFIC LAND COMPANY,

Respondents.

Opposition to Petition for a Writ of Certiorari

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SUBJECT INDEX

	Pages
I. Nature of the Litigation	1
II. Petitioner Has Shown No Valid Reason for This Court to Grant a Review on Writ of Certiorari	2
III. Petitioner's Claims of a "Cramer Cause of Action", an "1853 Act Cause of Action" and a Right to an Evidentiary Hearing Are Invalid	4
IV. Conclusion	8

TABLE OF CASES

Pages

Barker v. Harvey, 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 (1901) 2, 37

Buttz v. Northern Pacific Railroad Company, 119 U.S. 55, 7 S.Ct. 100, 30 L. Ed. 330 (1886) 4

Cramer v. United States, 261 U.S. 219, 43 S.Ct. 342, 67 L.Ed. 622 (1923) 4, 6

Indians of California v. The United States 98 Court of Claims 583 (1942) 3

Johnson v. M'Intosh, 8 Wheat. 543 (1823) 4

Pitt River Indians of California v. United States of America, 7 Indian Claims Commission 815 (1959) 2, 3, 4, 5

Super, et al., v. Work, 3F2d 90 (D.C. 1925), affirmed 271 U.S. 643, 46 S.Ct. 481, 70 L.Ed. 1128 ..... 3, 7

Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 75 S.Ct. 313, 99 L.Ed. 314 (1955) 7

Thompson v. Doaksum, 68 Cal. 593, 10 P. 199 (1886) 3

United States v. Title Insurance & Trust Co., 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110 (1924) 2, 3, 7

TABLE OF STATUTES

Act to Ascertain and Settle the Private Land Claims in the State of California, enacted March 3, 1851, Chap. 41 (Pet. App. E) 2, 3, 6

Act to provide for the Survey of the Public Lands in California, the granting of Preemption Rights therein, and for other purposes, enacted March 3, 1853, Chap. 145 (Pet. App. F) 6

Act of June 2, 1862, Chap. 94 (App. p 1) 6

Act of May 18, 1928, 25 U.S.C. 652, et seq.) (App. p 1) 5

Act of September 21, 1968, 25 U.S.C. 659, et seq.) (App. p 4) 5

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Respondents.

Opposition to Petition for a Writ of Certiorari

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The opposition of Respondents Pacific Gas and Electric Company, Publishers Forest Products, Southern Pacific Land Company, Diamond International Company, Kimberly-Clark Corporation, and Fruit Growers Supply Company, respectfully shows:

I

NATURE OF THE LITIGATION

Petitioner seeks review of a judgment of the Court of Appeal of the State of California, upholding judgments of

the Superior Court in Shasta County entered after Petitioner declined to further amend its complaints in the above entitled actions following the sustaining of demurrers with leave to amend. The California Supreme Court denied a hearing Pet. App. A,B,C and D).

In these actions Petitioner seeks to recover real property and to obtain other relief pertaining to the property, upon the allegation that "Pitt River Tribe of Indians, from time immemorial was and is the owner, and is seized and possessed, of certain land in Shasta, Modoc, Lassen and Siskiyou Counties, the boundaries of which are set out in Finding 25 of the Judgment of the Indian Claims Commission in *Pitt River Indians of California v. United States of America* (No. 347), reported at 7 *Indian Claims Commission Reports*, 815, 846-847." (Pet. App. A, pp 1-2). Respondents are alleged to be "large corporations which in total claimed ownership of at least 400,000 of the Tribe's 3½ million acres" (Pet. p 8).

II

PETITIONER HAS SHOWN NO VALID REASONS FOR THIS COURT TO GRANT A REVIEW ON WRIT OF CERTIORARI

The judgment of the California Court of Appeal is founded upon the law pertaining to the extinguishment of Indian title claims in California as enunciated by this Court in *Barker v. Harvey,* 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 (1901), and in *United States v. Title Insurance & Trust Co.,* 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110 (1924) (Pet. App. C pp 6-8).

In the *Barker v. Harvey* and *United States v. Title Insurance & Trust Co.* cases this Court construed and applied the Act to Ascertain and Settle the Private Land Claims in the State of California, enacted March 3, 1851[1] to hold that

1. 9 U.S. Stat. 631 (Pet. App. E).

the Act was intended to give repose to titles as well as to fulfill treaty obligations and that Indian title claims not perfected under the Act were extinguished in 1853.

The judgment of the Court below is not only in conformity with *Barker v. Harvey* and *United States v. Title Insurance & Trust Co.*, but is in accord with the judgments of this Court and inferior federal courts in the following cases, among others: *Super, et al., v. Work*, 3 F2d 90 (D.C. 1925), affirmed 271 U.S. 643, 46 S.Ct. 481, 70 L.Ed. 1128; *Indians of California v. The United States*, 98 Court of Claims 583 (1942); *Pitt River Indians of California v. United States of America*, 7 Indian Claims Commission 815 (1959).

The judgment of the Court below is also in accord with the rule established by the California Supreme Court in *Thompson v. Doaksum*, 68 Cal. 593; 10 P. 199 (1886).

The judgment of the Court below is further based upon non-federal grounds of state statutes of limitations, laches, and rules of pleading and practice (Pet. App. C, pp 11-13).

The petition herein actually and simply seeks an opportunity to re-argue the matters argued, considered, and decided, in this Court, in the Title Insurance & Trust Co. case.

There may be some appeal in the argument that the California Indians were not fairly treated by the sovereign United States or by the State of California. But these actions seek to recover from private parties lands granted to their predecessors by the sovereign a hundred or more years ago. The claims of aboriginal Indian title asserted herein would pertain to a large part or all of the State of California, including lands both public and private, and ownerships both large and small. The construction of the Act of March 3, 1851 placed upon it by this Court and other courts has, over the years, become the foundation of Cali-

fornia titles. To reconsider the rule today would not only be an inappropriate remedy for this Petitioner, if Petitioner is entitled to some remedy, but would truly create a financial and political disaster.

The question is not one for which there is a judicial remedy, at least in the framework of these actions. It is a political question, to be decided by the legislative branch, and to be remedied, if a remedy is required, by legislative action. *Johnson v. M'Intosh,* 8 Wheat. 543 (1823), *Super v. Work,* 3 F 2d 90, affirmed, 271 U.S. 643, 46 S.Ct. 481, 70 L.Ed. 1128 (1925); *Buttz v. Northern Pacific Railroad Company,* 119 U.S. 55, 7 S.Ct. 100, 30 L.Ed. 330 (1886). The Congress has, in fact, acted on numerous occasions to aid, assist and compensate the Indians of California for loss of their historical lands and hunting grounds.[2]

III

PETITIONER'S CLAIMS OF A "CRAMER CAUSE OF ACTION" AN "1853 ACT CAUSE OF ACTION" AND A RIGHT TO AN EVIDENTIARY HEARING ARE INVALID.

In addition to re-arguing the historical background and purpose of the 1851 Act and the points made by the government in its brief in the Title Insurance & Trust Company case, Petitioner argues that it is entitled to relief upon the authority of *Cramer v. United States,* 261 U.S. 219, 43 S.Ct. 342, 67 L.Ed. 622 (1923) (Pet. p 32). In the Cramer case

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2. Initially, specific areas of public domain were set apart by Executive Order as Indian reservations. See *Pitt River Indians of California v. United States,* 7 Ind. Cl. Com. 815, 852, disclosing the removal of Pitt River Indians to the Round Valley Reservation. In 1893, 1906 and 1908, Congress appropriated funds to purchase land for the use of Indians in California on reservations not suitable for cultivation or not on reservations. (27 Stat. 612 (1893); Stat. 1906, Ch. 3504; Stat. 1908, Ch. 153.) In 1910, 1911, 1912,

the Indians were individual occupants of land patented after 1853 pursuant to the 1866 Act (Railroad Grants). These Indian settlers had occupied, fenced, irrigated and cultivated the area in question prior to and at the time of the grant to the railroad. The Court recognized their rights as settlers acquired after 1853 and it afforded them rights similar to those which would have been accorded to white settlers under the same circumstances. The bases of the Cramer claim included individual occupancy and improvement of specifically described land, including fencing, irrigation, and cultivation, as well as the construction and maintenance of dwelling houses, prior to and at the time of the questioned railroad grant. This Court rejected the Indians' claims to lands which had not been so occupied, cultivated and fenced. Not only do the present cases deal with alleged tribal, rather than individual, rights, but the Petitioner was unable to allege any facts showing that it occupied, fenced, irrigated or cultivated any particular area or that it continued any

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1913, 1914 and 1925, Congress appropriated funds for purchase of land for landless Indians of California. (Stat. 1910, Ch. 140; Stat. 1911, Ch. 210; Stat. 1912, Ch. 388; Stat. 1913, Ch. 4; Stat. 1914, Ch. 222; 43 Stat. 1101 (1925).) In 1928 Congress conferred jurisdiction on the Court of Claims to determine claims for compensation by the Indians of California "by reason of lands taken from them . . . by the United States without compensation, or for the failure or refusal of the United States to compensate them for their interest in lands . . . which the United States appropriated to its own purposes without the consent of said Indians" (Act of May 18, 1928. 25 U.S.C. 652, et seq.) (App. p 3).

Congress appropriated funds for the payment of these claims in 1945 (59 Stat. 77), 1946 (60 Stat. 348), 1955 (69 Stat. 460), and 1960 (74 Stat. 512).

In 1958, Congress provided for distribution of Rancheria lands among the Indian occupants, at their election. (72 Stat. 619).

In 1964 Congress appropriated funds specifically to compensate the Pitt River Indians for satisfaction of the judgment in *Pitt River Indians of California v. United States*, docket No. 347, supra (78 Stat. 1033) and, in 1968 Congress provided for reimbursement to individual Pitt River Indians (Act of September 21, 1968. 25 U.S.C. 659, et seq.) (App. p 5).

such possession. Conclusionary pleading as suggested on pages 32 and 33 of the Petition is not sufficient under California law. No doubt the Petitioner would have amended its complaint to allege such facts if it could. The judgment was based upon this insufficiency of the complaints to show any right to relief upon a *Cramer v. United States* theory (Pet. App. C, pp 10-13).

Petitioner also argues (Pet. pp 35-37) to the effect that it had a cause of action against respondents under Section 6 of the Act of March 3, 1853[3] "based upon the protection from preemption of land in the occupation or possession of any Indian Tribe." Petitioner places too much reliance on Section 6. The cases decided subsequent to 1853 and cited herein, dealing with the extinguishment of Indian title, hold that the land was placed in the public domain through operation of the *1851 Act*. The 1853 Act extended the survey system to California and authorized preemption and public sales. It is true that Section 6 provided that the act did not authorize preemption or settlement upon lands in the occupation or possession of an Indian tribe, but the restriction did not refer to sales or to issuance of patents pursuant to other statutory provisions,[4] and, it was removed entirely by the Act of June 2, 1862, Chap. 94 (App. p 1).

It is not alleged in the second amended complaint (Pet. App. A, pp 1-11) that respondents' patents were issued in violation of any of these Acts.

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3. Stats. 1853, Chap. 145. (Pet. App. F).

4. Act of April 24, 1820. 3 Stats. 566 (Sales of Public Lands); Act of May 20, 1862. 12 Stat. 392. (Homestead Acts); Act of December 29, 1916. 43 U.S.C. 291 (Stock-raising Homestead); Act of March 3, 1877. 43 U.S.C. 321 (Desert Land Entries); Act of June 3, 1878. 43 U.S.C. 311 (Timber and Stone Act); Act of March 3, 1873. 17 Stat. 605 (Timber Culture); Acts of March 3, 1863, 12 Stat. 754 and March 3, 1877, 19 Stat. 392 (Townsite Acts).

Petitioner also argues that the taking of "Pitt River land" violated the First, Fifth and Ninth Amendments to the Constitution and that it should have been granted a "Constitutional fact" hearing for that reason (Petn. p 31). But Petitioner does not allege any recognition by the Congress of its claimed rights to the land in question. The absolute power of the Congress to extinguish or otherwise deal with Indian title based upon aboriginal possession is not only implicit in the Barker v. Harvey, United States v. Title Insurance & Trust Co., and Super v. Work cases, but has been repeatedly recognized by this Court. See *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 75 S.Ct. 313, 99 L.Ed. 314 (1955).

IV

CONCLUSION

Any relief to which Petitioner may be entitled for any taking of ancestral lands should be sought in the legislative branch. Justice could not be served by invalidating titles to California lands granted into private ownership more than a century ago. The Petition shows no valid reason for this Court to review the judgment of the Court of Appeal and the Petition should be denied.

Dated: April 6, 1976

Respectfully submitted,

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Appendix

Act of June 2, 1862, Chap. 94

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands belonging to the United States to which the Indian title has been or shall be extinguished shall be subject to the operations of the preemption act of the fourth of September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned: Provided, however, That when unsurveyed lands are claimed by preemption, notice of the specific tracts claimed shall be filed within six months after the survey has been made in the field; and on failure to file such notice, or to pay for the tract claimed within twelve months from the filing of such notice, the parties claiming such lands shall forfeit all right thereto, provided said notices may be filed with the Surveyor General, and to be noted by him on the township plats, until other arrangements have been made by law for that purpose."

INDIANS OF CALIFORNIA
25 U.S.C.

§ 651. Definitions

For the purposes of sections 651-657 of this title the Indians of California shall be defined to be all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State. May 18, 1928, c. 624, § 1, 45 Stat. 602.

§ 652. Claims against United States for appropriated lands; submission to Court of Claims; appeal; grounds for relief

All claims of whatsoever nature the Indians of California as defined in section 651 of this title may have against

the United States by reason of lands taken from them in the State of California by the United States without compensation, or for the failure or refusal of the United States to compensate them for their interest in lands in said State which the United States appropriated to its own purposes without the consent of said Indians, may be submitted to the Court of Claims by the attorney general of the State of California acting for and on behalf of said Indians for determination of the equitable amount due said Indians from the United States; and jurisdiction is conferred upon the Court of Claims of the United States, with the right of either party to appeal to the Supreme Court of the United States, to hear and determine all such equitable claims of said Indians against the United States and to render final decree thereon.

It is declared that the loss to the said Indians on account of their failure to secure the lands and compensation provided for in the eighteen unratified treaties is sufficient ground for equitable relief. May 18, 1928, c. 624, § 2, 45 Stat. 602.

§ 653. Statutes of limitations unavailable against claims; amount of decree; set-off

If any claim or claims be submitted to said courts, they shall settle the equitable rights therein, notwithstanding lapse of time or statutes of limitation or the fact that the said claim or claims have not been presented to any other tribunal, including the commission created by the Act of March 3, 1851 (Ninth Statutes at Large, page 631): *Provided,* That any decree for said Indians shall be for an amount equal to the just value of the compensation provided or proposed for the Indians in those certain eighteen unratified treaties executed by the chiefs and head men of the

several tribes and bands of Indians of California and submitted to the Senate of the United States by the President of the United States for ratification on the 1st day of June, 1852, including the lands described therein at $1.25 per acre. Any payment which may have been made by the United States or moneys heretofore or hereafter expended to date of award for the benefit of the Indians of California, made under specific appropriations for the support, education, health, and civilization of Indians in California, including purchases of land, shall not be pleaded as an estoppel but may be pleaded by way of set-off. May 18, 1928, c. 624, § 3, 45 Stat. 602.

§ 658. Distribution of $150 from fund to each enrolled Indian

Notwithstanding the provisions of section 656 of this title, the Secretary of the Interior, under such regulations as he may prescribe, is hereby authorized and directed to distribute per capita the sum of $150 to each Indian of California living on May 24, 1950, who is now or may hereafter be enrolled under sections 651 and 657 of this title. The Secretary of the Interior may, in his discretion, make such distribution from time to time to persons on the roll of the Indians of California approved on May 16, 1933, as he identifies such enrollees, before the completion of the revised roll provided for in section 651 of this title. The Secretary of the Interior is authorized to withdraw from the fund on deposit in the Treasury of the United States arising from the judgment in favor of the Indians of California entered by the Court of Claims on December 4, 1944, and appropriated for them by section 203 of the Act of April 25, 1945 (59 Stat. 77), such sums as may be necessary to make the

per capita payments required by this section, including not to exceed $15,000 for the purpose of defraying the expenses incident to carying out the provisions of sections 657 and 658 of this title. Such payments shall be made out of the accumulated interest on such judgment fund and so much of the principal thereof as is necessary to complete the payments. The money paid to enrollees pursuant to this section shall not be subject to any lien or claim of any nature against any of such persons, except for debts owing to the United States. May 24, 1950, c. 196, § 2, 64 Stat. 190.

§ 659. Distribution of judgment fund; preparation of Indian roll; applications for inclusion

(a) The Secretary of the Interior shall prepare a roll of persons of Indian blood who apply for inclusion thereon and (i) whose names or the name of a lineal or collateral relative appears on any of the approved rolls heretofore prepared pursuant to sections 651-657 of this title and the amendments thereto or (ii) who can establish, to the satisfaction of the Secretary, lineal or collateral relationship to an Indian who resided in California on June 1, 1852, and (iii) who were born on or before and were living on September 21, 1968.

(b) The roll so prepared shall indicate, as nearly as possible, the group or groups of Indians of California with which the ancestors of each enrollee were affiliated on June 1, 1852. If the affiliation of an enrollee's ancestors on that date is unknown, it shall be presumed to be the same as that of the ancestors' relatives whose affiliation is known unless there is sound reason to believe otherwise. Applicants whose ancestry is derived partly from one of the grounds named in section 660(b) of this title and partly from another group

of Indians in California shall elect the affiliation to be shown for them on the roll.

(c) Application for enrollment shall be filed with the Area Director of the Bureau of Indian Affairs, Sacramento, California, on forms prescribed for that purpose. Pub.L. 90-507, § 1, Sept. 21, 1968, 82 Stat. 860.

§ 660. Equal share distribution of 1964 appropriation

(a) The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title, except those whose ancestry is derived from one or more of the groups named in subsection (b) of this section, an equal share of the moneys which were appropriated by the Act of October 7, 1964 (78 Stat. 1033), in satisfaction of the judgment of the Indian Claims Commission in consolidated dockets numbered 31, 37, 80, 80-D, and 347, plus the interest earned thereon, minus attorneys fees, litigation expenses (including the reimbursement of funds expended under authority of the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512)), a proper share of the costs of roll preparation, and such amounts as may be required to effect the distribution.

(b) Persons whose ancestry is derived solely from one or more of the following groups and persons of mixed ancestry who elected to share, other than as heirs or legatees of enrollees, in any award granted to any of the following groups shall not share in the funds distributed pursuant to subsection (a) of this section: Northern Paiute, Southern Paiute, Mohave, Quechan (Yuma), Chemehuevi, Shoshone, Washoe, Klamath, Modoc, and Yahooskin Band of Snakes. Pub.L. 90-507, § 2, Sept. 21, 1968, 82 Stat. 860.

§ 661. Equal share distribution of undistributed balance of 1945 appropriation; credit to judgment account

(a) The Secretary shall distribute to each person whose name appears on the roll prepared pursuant to section 659 of this title regardless of group affiliation an equal share of the undistributed balance of the moneys appropriated in satisfaction of the judgment of the Court of Claims in the case of The Indians of California against United States (102 Court of Claims 837; 59 Stat. 94), plus the interest earned thereon, including the reimbursed moneys and unexpended balances of the funds established by the Acts of July 1, 1946 (60 Stat. 348), August 4, 1955 (69 Stat. 460), and July 14, 1960 (74 Stat. 512), minus a proper share of the costs of roll preparation and such amounts as may be necessary to effect the distribution.

(b) The Secretary of the Treasury is authorized and directed to credit to the judgment account referred to in subsection (a) of this section, for distribution as a part of such account, the sum of $83,275, plus interest at 4 per centum per annum from December 4, 1944, which sum represents the value of sixty-six thousand six hundred and twenty acres of land erroneously used as an offset against said judgment.

Pub.L. 90-507, § 3, Sept. 21, 1968, 82 Stat. 860, amended Pub. L. 91-64, Aug. 25, 1969, 83 Stat. 105.